

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BETTY MORRIS,

Plaintiff,

-against-

JOSEPH DELUCA, M.D., et al.,

Defendants.

23-CV-7229 (JGLC)

**ORDER**

JESSICA G. L. CLARKE, United States District Judge:

“[S]ubject matter jurisdiction is an unwaivable *sine qua non* for the exercise of federal judicial power.” *Curley v. Brignoli, Curley & Roberts Assoc.*, 915 F.2d 81, 83 (2d Cir. 1990). Consistent with that proposition, Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”

Title 28, United States Code, Section 1332 requires “complete” diversity of citizenship, and it is well established that diversity “is not complete if *any* plaintiff is a citizen of the same state as *any* defendant.” *St. Paul Fire & Marine Ins. Co. v. Universal Builders Supply*, 409 F.3d 73, 80 (2d Cir. 2005) (emphasis added). A review of the complaint in this action reveals that such is the case here, as Plaintiff and Defendants Shilpa Mehra, Arthur Abelow, New York GI Center, LLC, New York Associates in Gastroenterology, and Montefiore Medical Center are all citizens of New York State. ECF No. 1-1. The Court therefore lacks subject matter jurisdiction over this action.

Accordingly, the complaint is hereby REMANDED to the Supreme Court of the State of New York, County of Bronx without prejudice for lack of subject matter jurisdiction. Any pending motions are moot and any conferences are canceled. The Clerk of Court is directed to close the case.

SO ORDERED.

Dated: October 11, 2023  
New York, New York



JESSICA G. L. CLARKE  
United States District Judge